

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
VOICE (619) 767-2370
FAX (619) 767-2384



Th20d

ADDENDUM

October 11, 2023

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item Th20d**, Coastal Commission Permit Application **Nos. A-6-OCN-22-0019** and **6-23-0562 (Dillon et al.)**, for the Commission Meeting of October 12, 2023

The purpose of this addendum is to address comments received since publication of the staff report from the Surfrider Foundation and Jason Malec (see [Correspondence](#)), describe recent unpermitted development that occurred on one of the project sites, and attach the City's notice of permit violation for the unpermitted development. Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by ~~strike through~~ and additions shall be underlined:

- 1) On page 13, add a new Special Condition No. 16, Mean High Tide Line Survey in response to Surfrider's comments, as follows:

16. Mean High Tide Line Survey. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval a mean high tide line (MHTL) survey prepared by a licensed professional land surveyor based on field data collected within the last 12 months. The survey shall also include the location of the revetment, the current sand/cobble level, and the proposed location of any new rock. The survey shall be conducted in consultation with the California State Lands Commission (CSLC) staff. Prior to submitting this survey to the Executive Director, it must be approved by the CSLC as compliant with the CLSC survey standards. The survey shall:

- a. Use either the published Mean High Water (MHW) elevation from a National Oceanic and Atmospheric Agency published tide station closest to the project or a linear interpolation between two adjacent tide stations, depending on the most appropriate approach in light of tidal regime characteristics.

- b. Use the most current tidal epoch.
 - c. Use local, published control benchmarks to determine elevations at the survey site. Control benchmarks are the monuments on the ground that have been precisely located and referenced to the local tide stations and vertical datum used to calculate the MHTL elevation.
 - d. Match elevation datum with tide datum.
 - e. Reference all elevations and contour lines to the North American Vertical Datum 1988 (NAVD88).
 - f. Note survey date, datum, and MHW elevation.
- 2) On page 13, modify Special Condition No. 15, Future Impacts to Public Trust Lands, as follows:
- 15. Future Impacts to Public Trust Lands.** By acceptance of this permit, the applicants further agree that the development approval does not permit encroachment onto public trust lands and any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain. Any future encroachment would also be subject to the State Lands Commission's (or other designated trustee agency's) leasing approval. In the event that the public trust boundary migrates landward such that any portion of the approved development encroaches onto public trust lands, based on a Mean High Tide Line (MHTL) survey prepared in compliance with Special Condition No. 3 or Special Condition No. 16, the permittee or successor in interest shall submit a complete coastal development permit amendment application within 180 days of the subject MHTL survey date to seek authorization to retain, relocate, and/or remove the development, unless the Executive Director grants additional time for good cause. The permit amendment application shall include a formal Mean High Tide Line survey completed by California State Lands Commissions or approved by the CSLC as compliant with CSLC survey standards, and a complete evaluation of all feasible alternatives to modify the revetment to ensure that it is located entirely on private property. The information concerning these alternatives must be sufficiently detailed to enable the Coastal Commission to evaluate the feasibility of each alternative for addressing shoreline protection, public access, and sensitive resource issues under the Coastal Act and the City of Oceanside Local Coastal Program. Failure to submit a timely permit amendment application shall constitute a violation of the terms and conditions of this coastal development permit.
- 3) On page 7, revise Special Condition No. 1 – Final Plans - in response to Jason Malec's comments, as follows:

1. **Revised Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final plans for the permitted development. Said plans shall be in substantial conformance with the plans prepared by Gold Coast Surveying Inc., dated September 22, 2021, and shall be revised to include the following:
 - a. Beach sand conditions shall be restored to pre-work conditions.
 - b. Removal of all nine private access stairway(s) within project boundaries.
 - c. Removal, to the maximum extent feasible, of the concrete grouting located between and on top of revetment stones.
 - d. Removal of all other improvements including decking, patios, fireplaces, retaining walls, etc. that extend over any portion of the revetment.
 - e. Identify the location of the toe of the revetment (seaward extent) both at the current sand level and at the base of the revetment, excluding any rocks that have become dislodged and are proposed to be added back within the permitted revetment footprint.
 - f. Any new rock necessary to increase the crest of the revetment beyond the original envelope of the revetment as it was originally permitted by CDP No. 7654 shall be placed landward of the existing revetment crest, and new rock shall not occupy the area west of the exposed portion of the revetment currently used by the public.

The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

- 4) On page 12, revise Special Condition No. 11, Mitigation Plan for Public Access Improvements in response to Surfrider's comments, as follows:

11. **Mitigation Plan for Public Access Improvements.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, to offset the impacts to visual resources and public access associated with unpermitted development within the revetment including stairs, grouting and other improvements, the applicant shall submit a mitigation plan for the review and written approval of the Executive Director that includes several public access improvements at the western terminus of Marron Street, including but not limited to construction of a one new public access bench, bike racks accommodating no fewer than three bicycles, and removal of non-native vegetation (ice plant) and revegetating with native plantings. The applicant shall fully fund the access improvements and coordinate with the City of Oceanside to determine if any City permits will be required to install the access improvements, or if the City will construct the

improvements. The new improvements shall be made available to the public within 180 days of issuance of any required approvals and no later than a year from the approvals for CDP Nos. A-6-OCN-22-0019 and 6-23-0562.

- 5) On page 24, revise the third and fourth paragraphs to add findings in support of the modified Special Condition No. 1, Revised Final Plans, and new Special Condition No 16, Mean High Tide Line Survey, as follows:

Additionally, while as recently as 2013 the revetment was located well inland of the Mean High Tide Line (ref. [Exhibit Nos. 7, 8](#)), and therefore did not have impacts to public lands, more recently a reduction in sand on the beaches of Oceanside combined with rising tides has increasingly shrunk the distance separating the revetment from lands protect for public use. Most recently, based on aerial photography, it appears the MHTL is located in close proximity to the revetment (ref. [Exhibit No. 9](#)). Additionally, the applicant's ~~plans~~ surveys show the MHTL in late summer (when beaches are typically at their widest) of 2021 within a few feet of the exposed toe of the revetment in some cases. Therefore, when considering the full envelope of the revetment, including the portions below grade, it is likely that the revetment is already occupying land seaward of the current MHTL. Additionally, Policy 5 of Section III Water and Marine Resources; Diking, Dredging, Filling and Shoreline Structures and Hazard Areas of the City of Oceanside LUP makes clear that shoreline protective devices shall not interfere with access along the beach. Currently, the only area open for the public to pass seaward of the exposed revetment is actually on top of portions of the revetment that are buried by cobble and sand. Given this, if new rock is added in these areas, even though the existing footprint of the revetment is not being changed, the space the public has to cross will become further restricted and may render the sites impassable with the exception of the lowest tides. Therefore, the new rock proposed to increase the height of the revetment, should not be placed in a manner that will reduce the space the public has to cross in front of (seaward of) the exposed portions of the revetment.

To address this, and in order to ensure that the revetment is not obstructing the public's ability to access the coast, measures need to be taken to prevent any future or additional encroachments onto public lands and should include identifying the location of the revetment as it relates to the location of the MHTL ~~should be evaluated~~ on a regular basis. The frequency of this review is further warranted due to the ambulatory nature of the MHTL. Therefore, the Commission is imposing several special conditions, that in combination will provide annual evaluation of the revetment and the MHTL in order to ensure that impacts to public access are prevented. **Special Condition No. 1** requires the applicant to submit final plans that establish the seaward extent of the revetment. **Special Condition No. 6** requires the applicant to establish monuments on each parcel, to provide a permanent fixture to measure the location of the revetment against. **Special Condition No. 3** requires that the annual reports include the condition of the revetment as well as the location of the MHTL during the winter season (when sand levels are often low) annually. **Special Condition No. 10** requires the applicant to record the location of the revetment described in metes and bounds as a component of the required deed

restriction. Finally, **Special Condition No. 15** specifies that in the event that the public trust boundary migrates landward, if any portion of the approved development encroaches onto public trust lands based on a Mean High Tide Line (MHTL) survey required by Special Condition No. 3, the applicant shall submit a complete coastal development permit amendment application within 180 days of the subject MHTL survey date to seek authorization to retain, relocate, and/or remove the development. Because there is the potential that portions of the revetment may already be located seaward of the Mean High Tide Line, **Special Condition No. 16** requires the applicant to conduct and submit a Mean High Tide Line survey prior to issuance of the permit and in consultation with State Lands Commission, in order to ensure that any present encroachment is assessed for impacts to Public Trust Lands.

Finally, in order to ensure that the space the public is currently using within the revetment envelope, but currently covered by cobble or sand (below grade), remains available to the public, **Special Condition No. 1** requires that any new rock being used to increase the height of the revetment be located on the inland side of the revetment landward of the existing revetment crest, and that no new rock be placed seaward of the current location of the seaward-most exposed rock. The applicant's geotechnical report indicates that any increase in the revetment height will be accomplished landward of the existing revetment crest, therefore it is the intent of the applicants to conduct the work consistent with this requirement. Taking these conditions collectively, the small space the public currently uses seaward of the exposed revetments for lateral beach access will not be further impacted by this project beyond that necessary to stabilize the originally permitted structure, and the seaward location of the revetment will be established, memorialized, and maintained, and if future monitoring reports indicate that the revetment is encroaching onto lands protected for public use, the Commission will be made aware of it in a timely manner, and will review any encroachments as an amendment to this CDP.

- 6) Add the following findings after the fourth paragraph on Page 24, in response to comment letters received from The Surfrider Foundation and Jason Malec, as follows:

In a letter received from Surfrider Foundation on October 6th (see [Correspondence](#)), Mitch Silverstein provided comments on the staff report that are generally supportive of the recommendation and conditions of approval, but raise several concerns including that the location of the existing revetment already severely limits access in front of the revetment; requests a Mean High Tide Line survey prior to permit issuance; and asks for more specificity on the public access improvements proposed by the applicants. To address these concerns, **Special Condition No. 16** requires the applicant to conduct and submit a Mean High Tide Line survey in consultation with State Lands Commission to determine if any portion of the revetment is currently located seaward of the current Mean High Tide Line. In order to ensure that the small amount of beach area in front of the exposed revetment is protected for public

use, **Special Condition No. 1** has been revised to require the rock proposed to increase the height of the revetment is located inland of the existing crest of the revetment. Based on the information provided in the applicant's most recent geotechnical report, the importation of rock to increase the height of the revetment would be located inland of the revetment crest, consistent with this requirement. Finally, with regard to the public improvements on Marron Street, **Special Condition No. 11** has been revised to provide additional details, including that the bike rack shall provide space for no fewer than three bikes.

Additionally, in an email received from Jason Malec on October 6th (see [Correspondence](#)), he raises the following concerns: the MHTL located on the plans submitted by the applicant is inaccurate; the work proposed to the revetment may increase the impact the revetment has on public lands; and that the work proposed by the applicant does not qualify as repair and should be considered new development. First, the location of the MHTL is ambulatory and any surveys represent snapshots in time. Variability in the location of the MHTL is primarily due to changing beach levels. With regard to the location of the MHTL on the provided plans, the plans submitted by the applicant were drafted in 2019 and the beach in Oceanside has narrowed since that time, as indicated by surveys conducted in 2021 ([Exhibit 3](#)). Given the loss of sand and increase of erosion in this portion of the City's shoreline, it is possible that the MHTL has shifted inland from 2019 and may presently be located inland of the seaward most portions of the revetment due to portions of the revetment being buried by sand and cobble. The Commission's engineer has reviewed the plans and evidence submitted by Surfrider and Jason Malec illustrating recent beach widths, and believes it is likely that the toe of the revetment is located seaward of the Mean High Tide Line during low sand levels. Thus, **Special Condition No. 16** requires the applicants to complete a MHTL survey prior to issuance of the Coastal Development Permit, in order to provide the State Lands Commission with the information they will need to determine if the revetment is impacting public trust lands. That said, regardless of the location of the MHTL, the revetment was permitted by the Coastal Commission, and what is currently being proposed is repair work with a limited amount of augmentation, not "redevelopment" (as that term often used to mean work that is so extensive that the subject of the development must be treated as an entirely new structure), and as such, the question of whether the revetment could be realigned further inland is not being assessed at this time. When any of the homes, or the revetment itself is redeveloped, measures to protect public access, including inland realignment of the revetment will be analyzed at that time.

Regarding the potential that the proposed increase in revetment height may ultimately result in additional impacts to public access, through reducing the space currently used by the public, the Commission's engineer also agrees with this assertion, and to eliminate this potential impact, **Special Condition No. 1** has been revised to require that any new rock added to increase the height of the revetment is located inland of the existing crest of the revetment, and will not occupy the area west of the exposed portion of the revetment currently used by

the public beyond that required to repair the revetment to its originally permitted condition. Finally, regarding the assertion that the proposed work is not repair, the project represents both repair and augmentation. The applicant has submitted a geotechnical report that specifies the amount of work proposed at each site and when reviewed individually or collectively the project includes no greater than 20% modification to the existing revetment, and therefore does not constitute the creation of a new structure or “redevelopment” (as previously defined) of the revetment.

- 7) On page 28, add the following new paragraph after the second full paragraph, which describes the unpermitted development at 929 S. Pacific, as follows:

On September 20th, a member of the public reported that additional concrete work was being undertaken at one of the applicant’s properties – 929 S. Pacific Street. An unquantified amount of concrete was poured in the backyard area of 929 S. Pacific Street to create a retaining wall separating the site from the property to the south (933 S. Pacific Street) in what appears to have been an attempt to prevent fill from falling into the backyard. While some of the work appears to have been located on top of the revetment, this work is not a part of the subject application and did not receive authorization from the City or the Commission. Because the work is located completely within the City’s permit jurisdiction, the City conducted a site inspection on September 21st. The City issued a notice of permit violation on September 29th. Ultimate resolution of this unpermitted development will be carried out by the City, but the City has provided Commission staff with a preliminary indication that the wall will not be approved, and the City will be requiring the applicant to remove the retaining wall.

- 8) Add new exhibit – [Exhibit No. 10](#) “City of Oceanside Mean High Water Survey”



CITY OF OCEANSIDE

DEVELOPMENT SERVICES DEPARTMENT
CODE ENFORCEMENT DIVISION

057082

CASE #: CE23-4964

ADMINISTRATIVE CITATION

DATE ISSUED: 09-29-2023

☒ **WARNING** ☐ **1st Citation** \$100 ☐ **2nd Citation** \$200 ☐ **3rd Citation** \$500 ☐ **4th Citation** \$1000

Person Cited / Mailing Address:

GULSHAN DHAWAN
2089 TWAIN AVE
CARLSBAD, CA 92008

☒ Prop. Owner ☐ Tenant
☐ Prop. Manager ☐ Violator
☐ Bus. Owner

Violation Address:
929 S PACIFIC ST

Assessor's Parcel No.:
150-355-08-00

Violation(s) indicated below must be corrected by COMPLIANCE DATE: 10-19-2023

- Failure to correct the violation(s) by this date will result in the next level of citation being issued.
- Same violation(s) occurring within 1 year of the issuance date of this citation are subject to the next level citation.
- Payment is due no later than 30 days from issuance date of this citation (see reverse side for payment instructions).

Code Section Violated:

Date Observed: **VIOLATION / CORRECTION REQUIRED**

09-29-2023
12:50PM

OCC 19A.21(2). A coastal development permit shall be required for any methods of repair or maintenance of a seawall, of the following or other shoreline work: The placement, whether temporary or permanent, of riprap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective work except for agricultural dikes within enclosed bays or estuaries.

09-29-2023
12:50PM

OCC17.3 (a)(1) The existence of any property in the City In a condition which is adverse or detrimental to public, health, safety, or general welfare.

09-29-2023
12:50PM

OCC 17.3(k)The maintenance of any structure in a state of deteriorations, disrepair, or unsightliness, such as broken windows, roofs in disrepair, damaged porches, broken steps, damaged exterior wall coverings, or other such deterioration or disrepair not otherwise constituting a violation, and which is in public view, where such condition would contribute to blight, and appreciable diminution of the use, enjoyment, aesthetic or property values of surrounding properties.

NOTES: Revetment in a state of disrepair. Contact the City of Oceanside Planning Division to obtain information on permitting requirements for seawall repairs by no later than the compliance date.

Please contact me directly at 760.435.3953 to discuss additional compliance procedures related to this notice by no later than the compliance date.

If you have questions about this citation, call: OFFICER GENARO GARCIA 760-435-3953

Citation Served: ☐ In Person ☐ Posted on Property ☒ By Mail ☐ By Fax ☐ By Email

See Reverse Side For Information About Appeals and Payment of Penalty

OC_ADMIN_CITE.RPT